APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 233—September Term, 1963.

(Argued January 8, 1964 Decided January 10, 1964.)

Docket No. 28465

JAMES F. McMANUS,

Plaintiff-Appellant,

—v.—

LAKE CENTRAL AIRLINES,

Defendant-Appellee.

Before:

MOORE, KAUFMAN and MARSHALL,

Circuit Judges.

Appeal from a judgment of the United States District Court for the Eastern District of New York, Bruchhausen, *J.*, entered on a verdict directed by the court, pursuant to Rule 50, F. R. Civ. Proc., at the conclusion of the evidence.

Judgment affirmed.

JAMES F. McMANUS, *pro se, for appellant.*

EDWARD R. NEAHER, New York, N. Y. (Noel C. Crowley and Chadbourne, Parke, Whiteside & Wolff, on the brief), *for appellee.*

PER CURIAM:

James F. McManus appeals from a judgment for defendant Lake Central Airlines, Inc., entered on a verdict directed by the trial court pursuant to Rule 50, F. R. Civ. Proc., at the conclusion of all of the evidence. McManus, the proprietor of a travel agency in Levittown, Long Island, had alleged that Lake Central had conspired with other airlines to exclude the plaintiff from the sale of domestic air transportation. At the trial, it became clear that these allegations were wholly predicated on Lake Central's membership in the Air Transport Association of America, and the resolution of that organization restricting the dealings of member airlines to travel agencies approved by the association.

The directed verdict was entirely proper. The resolution of which McManus complains was approved by the Civil Aeronautics Board pursuant to the predecessor section of 49 U. S. C. §1382, upon a finding that it was not adverse to the public interest. Under the terms of 49 U. S. C. §1384, such approval immunized any conduct "authorized, approved or required" by the resolution from the reach of the antitrust laws. Indeed, at the behest of this very appellant, this court previously reviewed and upheld the Board against identical complaints that the approved practices were unduly restrictive. *McManus v. Civil Aeronautics Board* 286 F. 2d 414 (2d Cir.), cert. denied, 366 U. S. 928 (1961). And in that opinion, which set forth all of the material facts relevant to the present case, we expressly recognized the immunity from antitrust prosecution which CAB approval had afforded.

The appellant is here seeking precisely that relief to which our earlier opinion told him he was not entitled. The judgment is affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the tenth day of January one thousand nine hundred and sixty-four.

Present:

HON. LEONARD P. MOORE,
HON. IRVING R. KAUFMAN,
HON. THURGOOD MARSHALL,

Circuit Judges.

JAMES F. McMANUS,

Plaintiff-Appellant,

—v.—

EASTERN AIR LINES, INC., *et al.*,

Defendants,

LAKE CENTRAL AIRLINES,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.